

Applicant: James J. Rudnick
Application Serial No.: 09/977,823
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REMARKS

The application has been amended. Claims 31, and 38-41 have been amended. Entry of this amendment and reconsideration is respectfully requested.

In a previous Response, Applicant elected to prosecute, without traverse, Invention I, Species A, claims 19-24, 26-25 and 38-42. This election is again acknowledged. Moreover, as indicated by the Examiner claims 25, 36, 37 and 43 are indicated herein as being withdrawn.

The Examiner has objected to the drawing stating that Figure 1 should be designated with a legend such as "prior art." This determination is respectfully traversed.

This application is a continuation of U.S. Application No. 09/271,304, filed March 17, 1999, now U.S. Patent No. 6,319,277, which is a continuation of U.S. Application No. 08/708,651, filed September 5, 1996, now U.S. Patent No. 5,906,639, which is a continuation of U.S. Application No. 08/289,791, filed August 12, 1994, now U.S. Patent No. 5,575,816. During prosecution of the parent applications, no requirement was made to label Figure 1 as prior art. Moreover, each of the above-identified patents issued without such legend with respect to Figure 1. Accordingly, in an effort to maintain consistency with the parent patents, it is

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respectfully requested that the Examiner reconsider the requirement for Figure 1 to be designated by a legend such as "prior art."

The Examiner has objected to the specification noting that on page 3, line 18 it appears that Figure 1 should be indicated as Figure 2. In response thereto, page 3, line 18 of the specification has been amended in accordance with the Examiner's suggestion.

Claims 31 and 38-41 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite. The Examiner contends that the use of the term "wave-like" is considered indefinite. In an effort to expedite prosecution of the present application, claims 31 and 38-41 have been amended to eliminate the phrase "wave-like." Moreover, claim 31 has been amended to correct an informality noted by the Examiner. In view of the amendments presented above, the Examiner's rejection under 35 U.S.C. §112 is believed to be obviated.

Claim 26 stands rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 7 and 11 of U.S. Patent No. 5,906,639. In an effort to advance prosecution of the patent application, submitted herewith is a timely filed Terminal Disclaimer in compliance with 37 C.F.R. §1.321. Submission of this Terminal Disclaimer is believed to overcome the Examiner's double patenting rejection.

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Claims 19-21, 23, 24, 26, 27, 30-35 and 38-42 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 5,554,181 to Das. In addition, claim 22 stands rejected under 35 U.S.C. §103 as being unpatentable over Das in view of U.S. Patent No. 5,330,500 to Song. Still further, claims 28 and 29 are rejected under 35 U.S.C. §103 as being unpatentable over Das in view of U.S. Patent No. 5,653,727 to Witkor.

As will be set forth hereinbelow, it is respectfully submitted that the Das reference is not applicable against the claims of the present application and, therefore, the rejections by the Examiner which rely on Das are overcome.

Each of the above identified rejections is based on 35 U.S.C. §102(e) in that the Das patent has an issue date which is later than the filing date of the present application, but has a filing date which is earlier than the filing date of the present application. It is respectfully submitted that the presently claimed invention was completed, i.e., conceived and reduced to practice prior to the filing of Das. In support thereof, submitted herewith is a copy of previously Declaration pursuant to 37 C.F.R. §1.131. That Declaration was filed during the prosecution of parent application Serial No. 09/271,304 which matured into U.S. Patent No. 6,319,277. That Declaration was used to swear behind U.S. Patent No. 5,876,432 to Lau et al. (hereinafter "Lau")

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which was cited under 35 U.S.C. §102(e). The Lau patent has a filing date of April 1, 1994. The filing date of Das is May 4, 1994, which is later than Lau. The Declaration submitted previously sets forth that the subject matter of the present invention was both conceived and reduced to practice at a date prior to April 1, 1994 which is also prior to the effective filing date of Das. The Declaration, which was accepted by the USPTO, provides supporting documentation in the form of an Invention Disclosure dated prior to the effective date of Lau indicating conception of the invention. In addition, the supporting documentation also includes a test report summarizing testing which was conducted on actual samples of the device constructed in accordance with the present invention indicating reduction to practice. The Declaration was properly executed by both joint inventors.

It is respectfully submitted that the previously submitted Declaration, including the attachments thereto, clearly indicates that the present invention was conceived and reduced to practice and therefore completed at a date prior to April 1, 1994, the filing date of the Lau reference, which is also prior to the effective date of the Das reference applied herein. Therefore, the Das reference is not as an effective reference against the claims of the present invention. Accordingly, it is respectfully submitted that the Examiner's rejection of the claims based on Das is overcome.

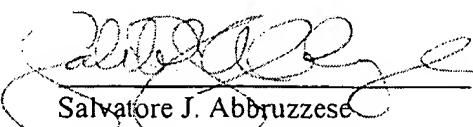
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Having therefore responded in full to the present Office Action, it is respectfully submitted that the application, including claims 19-24, 26-34 and 38-42 is in condition for allowance. Favorable action thereon is respectfully solicited.

The Commissioner is hereby authorized to charge payment of any additional fees, including additional claim fees, associated with this communication, or credit any overpayment, to Deposit Account No. 20-0776. Such authorization includes authorization to charge fees for extensions of time, if any, under 37 C.F.R. § 1.17 and also should be treated as a constructive petition for an extension of time in this reply or any future reply pursuant to 37 C.F.R. § 1.136.

Should the Examiner have any questions regarding this response, the undersigned would be pleased to address them by telephone.

Respectfully submitted,


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